Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review of Regulations	)	WC Docket No. 02-313
Administered by the Wireline Competition Bureau	)	
	)	

REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),[1] through the undersigned and pursuant to Federal Communications Commission (FCC or Commission) Rules 1.415 and 1.419,[2] hereby submits its reply comments in response to the Notice of Proposed Rulemaking[3] in the above-referenced proceeding.

DISCUSSION

In these reply comments USTA provides further input to the Commission regarding additional regulations that should be either eliminated or modified in its biennial review of regulations and responds to the requests of several commenters to impose additional regulations.

State Accounting Requirements

To the extent that the Commission eliminates or modifies by reduction any accounting requirements by local exchange carriers (LECs), the Commission should ensure, by preemption if necessary, that the same or substantially similar accounting requirements should be eliminated

[1] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

[2] 47 C.F.R. §§ 1.415 and 1.419.

[3] *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, WC Docket No. 02-313 (Notice).

or modified by state regulatory agencies. Without a corresponding reduction in regulation by state regulatory agencies, the benefit of any reduction in federal accounting requirements is essentially lost. Without such a corresponding reduction, LECs would still expend essentially the same amount of time and incur essentially the same expenses to comply with state reporting requirements that they would have if they were still reporting those same requirements to the Commission. LECs need one level of accounting detail for all reporting jurisdictions. LECs should not be required to report to states what they are not required to report to the Commission.

ARMIS Reporting

In the Commission's 2000 biennial regulatory review of ARMIS reporting requirements, the Commission maintained the requirement that all LECs at or above a set threshold must file ARMIS 43-01 financial reports at the study area level.[4] It also required all price cap carriers to file ARMIS 43-05 service quality reports at the holding company and study area level for all study areas,[5] even if the LEC is not required to file ARMIS 43-01 reports for certain study areas because it does not meet the threshold for filing such reports in those areas. USTA urges the Commission to eliminate requirements that price cap carriers file ARMIS 43-05 reports for those study areas where the LEC is not required to file ARMIS 43-01 reports. Continuing to require

[4] *See generally 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301 (rel. Nov. 5, 2001) (2000 Biennial Review Report-ARMIS).

[5] *Id*.

price cap carriers to file ARMIS 43-05 reports when they are not required to file ARMIS 43-01 reports is burdensome and unnecessary.

CAM Reports

In the 2000 Biennial Review Report-ARMIS, the Commission eliminated annual Cost Allocation Manual (CAM) filings for mid-sized carriers, but still required them to be prepared to produce documentation of how they separate regulated from nonregulated costs and to file an annual certification that they are complying with section 64.901 of the Commission's rules regarding such separations.[6] The Commission's elimination of the annual CAM reporting requirement for mid-sized carriers did reduce some regulatory burdens for them and this relief should continue. In addition, USTA believes it is appropriate to provide Bell Operating Companies (BOCs) with the same relief. As with the mid-sized companies, BOCs should file an annual certification of compliance and retain necessary documentation that could be produced to demonstrate how they separate regulated and nonregulated costs. Unless there is evidence of a problem with compliance, BOCs, like mid-sized companies, should not be required to comply with preparing and submitting these time-consuming and burdensome reports.

Regulation of Broadband

USTA agrees with the comments filed by Verizon, urging the Commission to eliminate or modify regulations imposed on broadband services.[7] Citing to the extensive competition to wireline facilities in the broadband market – cable providers are dominant in the broadband market and there are other competitive options for broadband services from third generation wireless, satellite, and power line facilities – Verizon notes that there is no need for the

[6] *See* 2000 Biennial Review Report-ARMIS, ¶¶190-191.

[7] *See* Verizon Comments at 6-22.

Commission to require BOCs to comply with Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) rules (also known as the Computer Rules) for broadband services. Because ILECs are not dominant in the broadband market, Verizon also urges the Commission to modify or forbear from applying economic Title II regulations to such services. They explain that the intermodal competition that exists today for broadband services is sufficient to eliminate any anti-competitive risks. Similarly, they state that the current status of intermodal competition for broadband services eliminates the need for ILECs to be subject to any unbundling obligations that Section 271 of the Telecommunications Act of 1996 (Act) might be construed to impose on broadband elements. Finally, elimination or reduction of regulations imposed on broadband services is critical for facilitating ILECs' ability to meet the goals of Section 706 of the Act – reasonable and timely deployment of advanced telecommunications capabilities to all Americans.

Network Change Disclosure Rules

USTA agrees with the Commission's proposed deletion of section 51.329(c)(3) of its rules, which requires paper and diskette copies of incumbent LECs' (ILECs') public notices or certifications sent to the Chief of the Wireline Competition Bureau. This is an appropriate elimination of an unnecessary regulation. However, further modification of network change disclosure requirements is necessary. The Commission should modify its rules to permit the clock to start with respect to implementation of network changes for both normal and short interval notices as soon as an ILEC posts such notices on its web site. Currently, the clock does not start on short-term notices until the Commission issues a Public Notice. As a result, when the issuance of a Public Notice is delayed by the Commission, it can lead to scheduling problems in implementing the network changes, additional and unnecessary service costs to ILECs,

unnecessary service deterioration, and unnecessary service complaints.[8] In addition, USTA advocates that there must be no more than a 60-day implementation delay beyond the original network change implementation timeframe when a revision is made to a previously posted network change notice. Delays beyond that lead to the same problems with scheduling, additional costs, service deterioration, and service complaints enumerated above.

Several other modifications are necessary to the network change notification requirements that the Commission implemented in its UNE Triennial Order.[9] The Commission's rule requiring ILECs to provide 90-days notice when replacing the distribution portion of the copper loop with fiber is unnecessarily burdensome and has a harmful impact on deployment of broadband services. As long as there is no opposition to such a network change, implementation should be allowed to occur in a timely manner, not exceeding 60 days. In addition, the Commission should modify the requirement stated in the UNE Triennial Order that ILECs must provide at least 91-days prior notice before any planned retirement of copper loops to be replaced by fiber-to-the-home (FTTH),[10] by stating that ILECs should file their disclosures for copper loop retirements, *whenever practicable*, at least 91 days prior to their planned retirement date. It is not uncommon that copper loop must be retired unexpectedly, but in non-emergency situations such as discovery of deteriorating outside plant, road moves, and bridge replacements. In these circumstances, ILECs must file waivers from compliance with the 91-day requirement,

[8] Service quality complaints resulting from the delayed issuance of a Commission Public Notice on proposed network changes will be reflected in ILECs' ARMIS service quality reports.

[9] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. Aug. 21, 2003) (UNE Triennial Order).

which places unnecessary burdens on both ILECs and Commission staff. Moreover, when a retirement must take place in less than 90 days, the Commission should use its best efforts to rule on any opposition in a timely manner so that local communities are not disrupted more than necessary.

Finally, the Commission specifically sought comment in the Notice regarding whether it should modify the titles enumerated in section 51.329(c)(1) of its rules by adding specific titles to identify notices of replacement of copper loops or copper subloops with FTTH loops as a means of assisting ILECs and other parties in determining applicable notice rules. Arguably, the Commission's proposal was made with the intent to minimize regulatory burdens, as it is tasked with doing in biennial regulatory reviews. However, several commenters[11] have seized this opportunity to request that the Commission impose additional regulatory requirements on ILECs. Not only is the forum for such action improper – again, a biennial regulatory review is intended for the purpose of eliminating or modifying through reduction of unnecessary regulatory requirements – but the requests are unreasonable and without basis of need.

MCI asks the Commission to allow competitive local exchange carriers (CLECs) to entirely block the ability of ILECs to retire copper loops.[12] This request has already been decided by the Commission. In the UNE Triennial Order, the Commission confirmed that retirement of copper loops that have been replaced with FTTH should not be subject to a blanket

[10] UNE Triennial Order, ¶283.

[11] *See generally* MCI Comments, Covad Comments, and ALTS Comments.

[12] *See* MCI Comments at 8.

prohibition, but only to appropriate network disclosure requirements.[13] ILECs do provide appropriate notice of such planned changes in full compliance with the Commission's rules.

MCI, Covad, and ALTS allege that there is no viable alternative to provide comparable broadband service to end users whose copper loops are taken out of service by ILECs. MCI maintains that ILECs should compensate CLECs for lost investment when CLECs eliminate DSL services as a result of ILEC copper retirement.[14] The simple fact is that there are alternatives for CLECs to provide broadband services when copper loops are retired: including through CLECs' own facilities, collocated on ILEC premises; by purchasing wholesale DSL services from ILECs; collocating at ILECs' DLC sites; converting current line sharing arrangements to ISDN UNEs from ILECs; and by accessing ILEC subloops at non-remote terminal locations. Certainly ILECs' actions to upgrade their facilities are not preventing CLECs from serving their customers and no damages to CLECs are warranted. If ILECs are required to compensate CLECs as part of any network modernization projects, this would greatly reduce ILECs' incentive to invest in facilities that are necessary to bring high speed access to the Internet to more customers and compete against other technologies such as cable, satellite and wireless for the provision of such services to customers. Such a result would be counter to the desire of the FCC and Congress to accelerate deployment of broadband capabilities.

MCI argues that ILECs must provide public notice of all FTTH and hybrid loop fiber deployments, even if they are not planned in conjunction with copper retirement, in order to comply with network change notification rules.[15] Not only is this an inaccurate interpretation of

[13] *See* UNE Triennial Order, ¶¶271, 281.

[14] *See* MCI Comments at 10-11.

[15] *See* MCI Comments at 15-16.

the Commission's notification rules, but it is an absurd demand for ILECs' business plans and strategies. This request must be dismissed outright.

Lastly, ALTS complains that CLECs do not have adequate time to object to proposed network changes because notices of such changes are sent via ordinary mail and thus, "CLECs usually get such notice long after any 9-day window [during which time objections must be made before an implementation is deemed final] would close."[16] This is simply not true. In short term notices for network changes, the Commission requires ILECs to individually serve CLECs with notice five business days in advance of filing with the Commission for short-term notification. This advance notice combined with the additional nine business days after the Commission releases its Public Notice about the proposed network change provides CLECs with adequate time to object to any such changes.

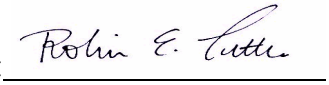
[16] *See* ALTS Comments at 3.

CONCLUSION

The Commission should take the additional actions identified herein to further eliminate and reduce regulatory burdens, as dictated in the Section 11 regulatory reform requirements of the Telecommunications Act of 1996. Despite the claims of numerous commenters, the purpose of this proceeding is not to increase regulation on ILECs.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on May 3, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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